

FEDERAL COURT OF APPEAL

B E T W E N:

ACTIAL FARMACEUTICA S.R.L.

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
F I L E D	Sep 27, 2022 Rebecca Duong
TORONTO, ON	1

Appellant

- and -

THE MINISTER OF HEALTH

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at **Toronto, Ontario**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date September 27, 2022 Issued by _____

Address of Local Office:

180 Queen St. West, Suite 200
Toronto, Ontario M5V 3L6

TO: **The ADMINISTRATOR**
Federal Court of Appeal
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AND TO: **ATTORNEY GENERAL OF CANADA**
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**Solicitors for the Respondent,
The Minister of Health**

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the decision of Justice S. Fothergill dated June 29, 2022 (the “Judgment”) which dismissed the application of Appellant to restrict the release of certain materials under the *Access to Information Act*, R.S.C. 1985, c. A-1, as amended (the “Act”).

THE APPELLANT ASKS that:

1. this appeal be allowed and the Judgment be set aside;
2. an Order be made that the Contentious Documents (defined below) are exempt from disclosure pursuant to section 20(1) of the Act;
3. such incidental Orders or Directions be made so as to preserve the confidentiality of the record in this appeal and of the Application (defined below) until the final determination of this appeal;
4. the Appellant be awarded its costs of this appeal and the Application below as against the Respondent, the Minister of Health; and
5. this Court grant such further and other relief as deemed just.

THE GROUNDS OF APPEAL are as follows:

6. The appealed-from application, Federal Court proceeding T-6-20, was an application by the Applicant, Actial Farmaceutica s.r.l, now the Appellant, to prevent the release of certain additional documents to the original Access to Information requestor (the identity of which is not known with certainty by the Appellant) pursuant to Health Canada’s Access to Information and Privacy Division file A-2018-001128/NK, as in the view of

the Appellant the Contentious Documents were properly exempt from disclosure under the exemptions provided in the Act (the “Application”).

7. In the course of the Application, the parties agreed regarding the vast majority of redactions already made to the records proposed for disclosure by the Access to Information and Privacy Division of Health Canada. The trial judge maintained these redactions.
8. The *l*ys of the dispute in the Application turned on whether two particular documents should, in addition, be exempt from disclosure under the Act. These are referred to herein as the “Contentious Documents.”

First Ground – The Appellant is Property a “Third Party” under the Act

9. The trial judge erred in fact and in law in determining that the Appellant (Applicant below) was not a “third person” for the purposes of the Act, and therefore not entitled to bring the proceeding.

Second Ground – The Contentious Documents are Exempt from Disclosure

10. The trial judge erred in law and in fact in determining that the Appellant did not meet the burden of demonstrating that the Contentious Documents were exempt from disclosure *in toto* under the exemptions from disclosure for certain third-party materials permitted by section 20(1) of the Act.
11. In particular, the trial judge erred in fact and in law by relying at least in part on evidence that some of the content of the Contentious Documents was publicly available. In doing so, he misapprehended the import of statements by the Appellants’ competitors and disaffected former officers, which are not to be taken as true statements of actual

“information” that is publicly available.

12. Further, although the trial judge correctly held that the burden of showing that any given information is exempt from disclosure must be born by the applicant, he erred in law by incorrectly applying too high a standard for the threshold that must be met by such an applicant to show that the information meets the exemptions.

Provisions relied on

13. The Appellant will rely on:
- (a) The *Access to Information Act*, R.S.C. 1985, c. A-1, as amended;
 - (b) The record of the Application below; and
 - (c) Such other provisions as counsel may advise and the Court of Appeal accept.

September 27, 2022



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**Solicitors for the Appellant,
Actial Farmaceutica s.r.l.**

Court File No. A- -22
(T-6-20)

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Appellant

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Actial Farmaceutica s.r.l.**